

31A-5-101. Definitions.

In this chapter, unless the context requires otherwise:

(1) The definitions of the following terms applicable to the Utah Revised Business Corporation Act in Section 16-10a-102 apply to stock corporations:

- (a) "affiliate";
- (b) "mail"; and
- (c) "notice."

(2) The definitions to the following terms applicable to nonprofit corporations in Section 16-6a-102 apply to mutuals:

- (a) "articles of incorporation";
- (b) "bylaws"; and
- (c) "member."

(3) "Promoter securities" are securities issued by a stock insurer to the incorporators, directors, officers, or their families or nominees at any time prior to, and up to one year following, the issuance of a certificate of authority to the stock insurer.

Amended by Chapter 386, 2009 General Session

31A-5-102. Scope and purposes.

(1) (a) Except as expressly provided otherwise in this title, this chapter applies to all corporations organized under Utah law and doing an insurance business as defined under Section 31A-1-301, except those expressly governed by other chapters of this title. This chapter applies to corporations doing a reinsurance business, whether or not they do other insurance business.

(b) Except as expressly provided otherwise, this chapter does not apply to nondomestic insurers.

(c) Except as provided otherwise in this title, Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act, apply to corporations under this chapter.

(d) If Title 16, Chapter 6a, or Title 16, Chapter 10a, conflict with this title, this title governs.

(2) The purposes of this chapter include:

(a) to provide a procedure for the formation of insurance corporations;

(b) to assure the solidity of insurance corporations by providing an organizational framework to facilitate sound management, sound operation, and sound regulation;

(c) to provide fair means of corporate transformation; and

(d) where feasible, to strengthen internal corporate democracy through enhancing shareholder and policyholder participation.

Amended by Chapter 300, 2000 General Session

31A-5-103. Orders imposing and relaxing restrictions.

(1) The commissioner may by order subject an individual corporation not otherwise subject to some or all of the restrictions of Subsections 31A-5-304(4), 31A-5-305(1)(a), 31A-5-305(2)(a)(i) and (ii), and 31A-5-410(1)(b) if he finds after a

hearing that the individual corporation's financial condition, management, and other circumstances require additional regulation for the protection of the interests of insureds or the public. The commissioner shall detail in writing the grounds for his order.

(2) The commissioner may by order free a new corporation from any or all of the restrictions generally applicable to new corporations under the provisions listed in Subsection (1), if he is satisfied that the corporation's financial condition, management, and other circumstances give assurance that the interests of insureds and the public will not be endangered by doing so.

Amended by Chapter 1, 2000 General Session

31A-5-104. General corporate powers and procedures.

(1) (a) Subject to other provisions of this code, Section 16-10a-302 applies to stock and mutual insurance corporations.

(b) Subject to other specific provisions of this title, a domestic insurance corporation may participate in any activity permitted as a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other enterprise.

(2) Subsections 16-10a-303(2)(a) and (b) apply to stock corporations, and Section 16-10a-622 applies to mutuals.

(3) Whenever a seal is required on a corporate document, writing or printing the word "Seal" constitutes a valid seal.

(4) In waiving notice and in informal actions by shareholders, members, or directors, Sections 16-10a-704, 16-10a-706, and 16-10a-823 apply to stock corporations, and Sections 16-6a-705 and 16-6a-707 apply to mutuals.

(5) A life insurance corporation may hold assets under Section 31A-22-410 as general corporate assets or as trustee.

Amended by Chapter 300, 2000 General Session

31A-5-105. Documents as evidence.

A certificate issued by the commissioner under a provision of this chapter is prima facie evidence of the facts stated in the certificate.

Enacted by Chapter 242, 1985 General Session

31A-5-106. Unauthorized assumption of corporate power.

All persons who presume to act as a corporation under this chapter without authority to do so are jointly and severally liable for all debts and liabilities incurred or arising as a result.

Enacted by Chapter 242, 1985 General Session

31A-5-108. Transition provision for former mutual benefit associations, cooperative associations, county mutuals, and reciprocal insurers.

(1) Except as otherwise provided in this code, a domestic stock or mutual insurance corporation, including an incorporated mutual benefit association, a county

mutual, a reciprocal insurer, or an incorporated cooperative association, holding a valid certificate of authority on July 1, 1986, continues to be authorized within the limits of its certificate of authority. Incorporated mutual benefit associations, county mutuals, reciprocal insurers, and cooperative associations become Chapter 5 mutuals by operation of law on July 1, 1986.

(2) If timely adjustment to the requirements of Chapter 5 would cause an existing stock or mutual insurance corporation hardship, disproportionate expense, or serious inconvenience, the commissioner may, upon the corporation's request, grant an extension for compliance with specified requirements, if the interests of insureds and the public are not endangered. The extension may not be beyond July 1, 1988.

Enacted by Chapter 242, 1985 General Session

31A-5-109. Compliance extension.

If timely adjustment to a particular requirement applicable to a Chapter 5 mutual would cause a former county mutual, reciprocal insurer, cooperative association, or mutual benefit association hardship, disproportionate expense, or serious inconvenience, the commissioner may, upon the insurer's request, grant an extension for compliance if the interests of insureds and the public are not endangered. This extension may not be beyond July 1, 1988. The requirement of payment of taxes and fees is not considered a hardship or a disproportionate expense.

Enacted by Chapter 242, 1985 General Session

31A-5-201. Reservation and registration of corporate name.

The reservation, registration, and renewal of the corporate name of stock corporations and mutuals is governed by Sections 16-10a-402, 16-10a-403, and 31A-1-109. The reservation and registration fees provided in Section 31A-3-103 apply.

Amended by Chapter 344, 1995 General Session

31A-5-202. Incorporators.

(1) One or more adult natural persons may organize and act as incorporators of a corporation under Section 31A-5-204.

(2) One to 15 adult natural persons may organize and act as incorporators of a corporation under the accelerated organization procedure of Section 31A-5-213.

(3) This section does not apply to stock and mutual insurance corporations already in existence on July 1, 1986.

Amended by Chapter 71, 2002 General Session

31A-5-203. Articles and bylaws.

(1) The articles of incorporation requirements in Section 16-10a-202 apply to the articles of a stock corporation, except that:

(a) the name of the corporation shall comply with Sections 16-10a-401 and 31A-1-109 and the name of any new or renamed corporation shall include the word

"insurance" or a term of equivalent meaning;

(b) authorized shares shall conform to Subsection 31A-5-305(1) and the capital provided for shall conform to Section 31A-5-211; and

(c) beginning on July 1, 1988, the purposes of the corporation are limited to those permitted by Section 31A-4-107.

(2) The articles of incorporation requirements in Section 16-6a-202, except Subsections 16-6a-202(1) (f) and (g), apply to the articles of a mutual except that:

(a) The name of the corporation shall comply with Sections 16-6a-401 and 31A-1-109 and the name of any new or renamed corporation shall include the words "mutual" and "insurance" or terms of equivalent meaning.

(b) If any mutual bonds are authorized, they shall comply with Subsection 31A-5-305(2)(a).

(c) The purposes of the corporation may not include doing a title insurance business, and shall be limited to those purposes permitted by Section 31A-4-107.

(d) If assessable policies are permitted, the articles shall contain provisions giving assessment liabilities and procedures, including a provision specifying the classes of business on which assessment may be separately levied.

(e) The articles may specify those classes of persons who may be policyholders, or prescribe the procedure for establishing or removing restrictions on the classes of persons who may be policyholders. The articles shall also state that each policyholder is a member of the corporation.

(3) Sections 16-10a-830 and 16-10a-831 apply to stock corporations and Section 16-6a-818 applies to mutuals. The articles or bylaws shall designate three or more principal offices the principal officers of the corporation shall hold. The principal offices shall be held by at least three separate natural persons.

(4) The bylaws of a domestic corporation shall comply with this chapter. A copy of the bylaws, and any amendments to them, shall be filed with the commissioner within 60 days after their adoption. Subject to this Subsection (4), Subsections 31A-5-204(2)(c) and (5), Subsection 31A-5-213(4), and Section 16-10a-206 apply to stock corporations and Section 16-6a-206 applies to mutuals.

Amended by Chapter 364, 2008 General Session

31A-5-204. Organization permit -- Certificate of incorporation.

(1) Subject to Section 31A-5-213, a person, including a stock insurance corporation, insurance holding company, stock corporation to finance an insurer or insurance production for an insurer, corporation to provide management or administrative services for any of the entities named above, or mutual insurer, may not solicit subscriptions for its securities, or in the case of a mutual insurance corporation, solicit applications for qualifying insurance policies or subscriptions for mutual bonds or contribution notes, until the commissioner has issued an organization permit.

(2) The application for an organization permit shall give the name of the insurer to be formed and shall be signed and acknowledged by or on behalf of each incorporator. The application shall include or have attached:

(a) the names, and for the preceding 10 years all addresses, and all occupations of the incorporators and the proposed directors and officers;

(b) for all persons planned by the incorporators to own 10% or more of the capital stock of the corporation, their annual financial statements and reports for the three most recent years, and if the planned shareholders are corporations, their articles and bylaws, and a list of the names, addresses, and occupations of all their directors and principal officers;

(c) the proposed articles, which shall be signed and acknowledged by or on behalf of each incorporator, and the proposed bylaws;

(d) all agreements relating to the corporation to which any incorporator, proposed director, or officer is a party;

(e) the amount and sources of the funds available for organization expenses and the proposed arrangements for reimbursement and compensation of incorporators or other persons;

(f) the plan for solicitation of applications for qualifying insurance policies and for the corporation's securities;

(g) the forms to be used for stock subscriptions, certificates for shares, applications for qualifying insurance policies, subscriptions for mutual bonds and contribution notes, and the forms for bonds and notes;

(h) the capital and initial paid in surplus in the case of a stock insurer, or the minimum permanent surplus and the additional surplus in the case of a mutual insurer;

(i) the plan for conducting the insurance business, including:

(i) the geographical area in which business is intended to be done in the first two years;

(ii) the types of insurance intended to be written in the first two years;

(iii) the proposed marketing methods;

(iv) when requested by the commissioner, the proposed method for establishing premium rates; and

(v) the proposed aggregate compensation of the five highest compensated officers, directors, and employees;

(j) a projection certified by a member of the American Academy of Actuaries of the anticipated operating results of the corporation at the end of each of the first two years of operation, based on reasonable assumptions of loss experience, premium and other income, operating expenses, and acquisition costs; and

(k) any other relevant document or information the commissioner reasonably requires.

(3) The commissioner shall issue an organization permit if:

(a) all the requirements of law have been met, including the payment of fees;

(b) all the incorporators, persons listed in Subsection (2)(b), and the proposed directors and officers of the corporation being formed, are trustworthy and collectively have the competence and experience to engage in the particular insurance business proposed;

(c) the business plan is consistent with the interests of the corporation's potential insureds and the public; and

(d) the bond required by Section 31A-5-205 is filed.

(4) If the commissioner denies the application for a permit, the commissioner shall state the reasons for the denial.

(5) (a) The organization permit shall:

(i) specify the minimum capital or minimum permanent surplus required under Section 31A-5-211; and
(ii) describe the securities or policies to be solicited under the permit.
(b) The organization permit may contain any other information the commissioner considers necessary.

(6) The director of the Division of Corporations and Commercial Code shall accept the filing of the corporation's articles of incorporation upon notice from the insurance commissioner that all the applicable requirements of law have been met, including the payment of fees.

(7) (a) When the director of the Division of Corporations and Commercial Code accepts the articles of incorporation:

- (i) the legal existence of the corporation begins;
- (ii) the articles and bylaws become effective; and
- (iii) the proposed directors and officers take office.

(b) The certificate is conclusive evidence of compliance with this section, except in a proceeding by the state against the corporation.

(8) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the permit applicant may request that any part of the information supplied under Subsection (2) be kept confidential. The information shall then be kept confidential unless the commissioner expressly finds, after a hearing, that the interest of the corporation or the public requires that the information be open to the public.

Amended by Chapter 382, 2008 General Session

31A-5-205. Bond.

(1) No organization permit may be issued until the commissioner receives from the applicants a bond of an authorized corporate surety, or a deposit of cash or approved securities under Section 31A-2-206. This bond or deposit shall be in an amount the commissioner determines is sufficient, but in no event may it be less than \$20,000, nor more than \$100,000. The bond or deposit shall be in favor of the state of Utah and of any subscribers and creditors of the applicant, for the payment of costs incurred by the state by reason of dissolution of the corporation before the issuance of a certificate of authority and for the payment of other debts incurred in the organizational period. The bond shall be discharged or the deposit returned upon issuance of the certificate of authority under Section 31A-5-212.

(2) This section does not apply to stock or mutual insurance corporations already in existence on July 1, 1986.

Enacted by Chapter 242, 1985 General Session

31A-5-206. Sale of securities by authorized insurer.

A domestic insurer that has already received a certificate of authority may issue additional securities to obtain further financing, after obtaining a solicitation permit from the commissioner. The organizational permit requirements in Section 31A-5-204 apply if the commissioner prescribes its application. The phrase "organization permit" in Section 31A-5-204 means "solicitation permit" when being applied to this section. The

solicitation permit terminates one year from the date of its issuance. However, this permit may be extended for not more than one additional year by the commissioner on terms he considers sufficient to protect the policyholders, the shareholders, and the public.

Amended by Chapter 95, 1987 General Session

31A-5-207. Powers under organization permit.

- (1) While its organization permit is in effect a stock corporation may:
 - (a) register stock under Section 31A-5-302, solicit subscriptions subject to Section 16-10a-620, accept payment for the subscriptions in cash or, with the approval of the commissioner, in other property constituting a permitted investment under Chapter 18, and issue receipts for payments made at values approved by the commissioner, but no certificates for shares may be issued until a certificate of authority has been issued; and
 - (b) transact all other business necessary and appropriate in the organization of the planned insurance enterprise.
- (2) While its organization permit is in effect a mutual may:
 - (a) register mutual bonds under Section 31A-5-302, solicit applications for qualifying insurance policies under Subsection 31A-5-211(5), solicit subscriptions for mutual bonds and contribution notes and accept payment for the subscriptions in cash or, with the approval of the commissioner, in property constituting a permitted investment under Chapter 18, and issue receipts for payments made at values approved by the commissioner, but no policies or bonds are effective or may be issued until a certificate of authority has been issued; and
 - (b) transact all other business necessary and appropriate in the organization of the planned insurance enterprise.
- (3) (a) The existence of the organization permit may not be used as an inducement in any solicitation.
 - (b) No person may knowingly, with intent to deceive, exhibit any false document or account regarding the affairs of any organization under Section 31A-5-204 or make any misrepresentation about its affairs.
- (4) Solicitations under this section may be made for stock or bond subscriptions only by persons registered under Title 61, Chapter 1, as broker-dealers or agents. Solicitations under this section may be made for qualifying insurance policies only by persons licensed under Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries, as insurance producers. Before any solicitation, the solicitor shall obtain from the commissioner a license to solicit, after paying the fee applicable under Section 31A-3-103.
- (5) This section does not apply to stock or mutual insurance corporations already in existence on July 1, 1986.

Amended by Chapter 298, 2003 General Session

31A-5-208. Deposit of proceeds of subscriptions.

- (1) All funds, and the securities and documents representing interests in

property, received by a stock corporation for stock subscriptions or by a mutual for applications for insurance policies or for mutual bond or contribution note subscriptions, shall be deposited in the name of the corporation with a custodian financial institution qualified under Subsection 31A-2-206(1). This deposit is subject to an escrow agreement approved by the commissioner under which withdrawals may be made only in accordance with conditions specified in the agreement, and with the commissioner's approval. Securities may be held as authorized in Subsection 31A-2-206(2) and are required to be approved by the commissioner.

(2) This section does not apply to stock or mutual insurance corporations already in existence on July 1, 1986.

Amended by Chapter 297, 2011 General Session

31A-5-209. Termination and revocation of organization permit and payment of organization expenses.

(1) The organization permit terminates upon:

- (a) issuance of a certificate of authority under Section 31A-5-212;
- (b) revocation of the organization permit under Subsection (2); or
- (c) expiration of one year after issuance, except that
 - (i) filing with the commissioner a good-faith application for a certificate of authority tolls the running of the expiration period for 30 days or until the commissioner rejects the application, whichever is earlier; and

(ii) on application before expiration of the year the commissioner may grant a reasonable extension if he states that he expects the corporation to be able to satisfy the requirements for a certificate of authority within the extended period.

(2) The commissioner may revoke an organization permit if:

- (a) he finds, after a hearing, that because of changes in circumstances, or because the facts are not as represented in the application, the conditions for issuance of a permit are not satisfied; or

- (b) he denies an application for a certificate of authority and finds that the corporation cannot reasonably be expected to satisfy the requirements for a certificate of authority within the remaining term of the organization permit or extension allowable under Subsection (1)(c).

(3) (a) Except in cases under Subsections (3)(b) and (3)(c), if the organization permit is revoked or expires before a certificate of authority is granted, after payment of the expenses of the state and payments to creditors under Section 31A-5-205, incorporators who have advanced money for the reasonable and authorized expenses of organization, including underwriting expenses, may be reimbursed in cash from the proceeds of share, mutual bond, or contribution note subscriptions under the organization permit, on itemized receipts audited by the commissioner. The total reimbursement may not exceed 5% of the amount received from subscribers. The remainder in the escrow account shall then be distributed among the subscribers in proportion to their contributions, valued as of the time the contributions were made. The bond under Section 31A-5-205 shall be discharged or the deposits under Section 31A-5-205 shall be released to the extent they are not needed for other purposes.

(b) Reimbursement may be refused to any incorporator under Subsection (3), if

the commissioner finds that in connection with the organization of the corporation, the incorporator has wilfully or negligently violated in a material way any provision of this chapter.

(c) No reimbursement may be made under Subsection (3)(a) to an incorporator of an assessable mutual until all advance premiums collected under Subsection 31A-5-211(5) have been repaid in full.

(4) The legal existence of the corporation terminates upon completion of the payments under Subsection (3).

(5) This section does not apply to stock or mutual insurance corporations already in existence on July 1, 1986.

Enacted by Chapter 242, 1985 General Session

31A-5-210. Incorporators' liability and organization expenses.

(1) The incorporators are jointly and severally liable for all organizational and promotional expenses and obligations incurred prior to the issuance of the certificate of authority. Upon issuance of the certificate, the insurer may pay those outstanding expenses and obligations lawfully incurred.

(2) (a) (i) After issuance of the certificate of authority, incorporators of a stock corporation who have advanced money or incurred obligations for the reasonable and authorized expenses of organization, including underwriting of securities, may be reimbursed in cash from the proceeds of shares subscribed to under the organization permit, or in shares at the public offering price, on itemized receipts audited by the commissioner.

(ii) Promotional securities in connection with the financing of a stock corporation which is in the promotional, exploratory, or developmental stage may be issued in an amount and for a consideration which is not unreasonable. In this regard, the commissioner may adopt rules setting forth standards with respect to promotional securities allowed to be issued and the considerations to be received for them. The reimbursement for expenses under Subsection (2)(a)(i) has priority over the issuance of promotional securities under Subsection (2)(a)(ii).

(iii) In no event may securities issued under Subsection (2)(a)(i) or promotional securities issued under Subsection (2)(a)(ii) be issued in a manner which would, in the aggregate, cause the dilution in the net tangible asset value of the insurer's securities proposed to be issued to the public to exceed 25%.

(b) After issuance of the certificate of authority, incorporators of a mutual who have advanced money or incurred obligations for the reasonable and authorized expenses of organization may be reimbursed in cash from the proceeds of subscriptions for mutual bonds and contribution notes, on itemized receipts audited by the commissioner. The total reimbursement may not exceed 15% of the amount received for the bonds and notes.

(3) This section does not apply to stock or mutual insurance corporations already in existence on July 1, 1986.

Enacted by Chapter 242, 1985 General Session

31A-5-211. Minimum capital or permanent surplus requirements.

(1) (a) Except as provided in Subsections (4) and (5), insurers being organized or operating under this chapter shall maintain minimum capital or permanent surplus for a mutual, in amounts specified in Subsection (2).

(b) The certificate of authority issued under Section 31A-5-212 does not permit an insurer to transact types of insurance for which the insurer does not have the required minimum capital or permanent surplus for a mutual, in at least the amounts specified under Subsection (2).

(c) Minimum capital and permanent surplus requirements under this section are based upon all types of insurance transacted by the insurer in any and all areas which it operates, whether or not only a portion of those types of insurance is or is to be transacted in this state.

(2) The minimum capital, or permanent surplus for a nonassessable mutual, is as follows for the indicated types of insurance:

(a) life, annuity, accident and health, or any combination of these.....	\$400,000
(b) subject to an aggregate maximum of \$1,000,000 for more than one of the following types of coverages:	
(i) property insurance.....	200,000
(ii) surety insurance.....	300,000
(iii) bail bonds insurance only.....	100,000
(iv) marine and transportation insurance.....	200,000
(v) vehicle liability insurance, residential dwelling liability insurance, or both.....	400,000
(vi) liability insurance.....	600,000
(vii) workers' compensation insurance.....	300,000
(c) title insurance.....	200,000
(d) professional liability insurance, excluding medical malpractice.....	700,000
(e) professional liability, including medical malpractice.....	1,000,000
(f) all types of insurance, except life, annuity, or title.....	2,000,000

(3) Prior to beginning operations, an insurer licensed under this chapter shall have total adjusted capital in excess of the company action level RBC as defined in Subsection 31A-17-601(8)(b).

(4) (a) Subject to Subsections (4)(b) and (4)(c), an insurer holding a valid certificate of authority to transact insurance in this state prior to July 1, 1986, continues to be authorized to transact the same kinds of insurance as permitted by that certificate

of authority, if the insurer maintains not less than the amount of minimum capital or permanent surplus required for that authority under the laws of this state in force immediately prior to July 1, 1986.

(b) If, after July 1, 1986, an insurer ever has minimum capital or permanent surplus that meets or exceeds the requirements of Subsections (2) and (3), then Subsection (4)(a) is inapplicable to that insurer and it shall comply with Subsections (2) and (3).

(c) Any insurer satisfying the minimum capital or permanent surplus requirement through application of Subsection (4)(a) shall comply with Subsections (2) and (3) by July 1, 1990.

(d) Beginning July 1, 1987, former county mutuals shall comply with the capital and surplus requirements of this section.

(5) (a) (i) An assessable mutual may be organized under this chapter, but it may not issue life insurance or annuities.

(ii) An assessable mutual need not have a permanent surplus if the assessment liability of its policyholders is unlimited and all insurance policies clearly state that.

(iii) If assessments are limited to a specified amount or a specified multiple of annual advance premiums, the minimum permanent surplus is the amount that would be required under Subsections (2) and (3) if the corporation were not assessable, reduced by an amount that reasonably reflects the value of the policyholders' assessment liability in satisfying the financial needs of the corporation.

(iv) The liability of members in an assessable mutual is joint and several up to the limits provided by:

(A) the articles of incorporation of the assessable mutual; or

(B) this title.

(b) (i) Except as provided in Subsections (5)(c) and (d), a certificate of authority may not be issued to an assessable mutual until it has at least 400 bona fide applications for insurance from not less than 400 separate applicants, on separate risks located in this state, in each of the classes of business upon which assessments may be separately levied. A full year's premium shall be paid with each application and the aggregate premium is at least \$50,000 for each class.

(ii) If at any time while the corporation is an assessable mutual, the business plan is amended to include an additional class of business on which assessments may be separately levied, identical requirements of Subsection (5)(b)(i) are applicable to each additional class.

(c) Five or more employers may join in the formation of an assessable mutual to write only workers' compensation insurance if, instead of the requirements of Subsection (5)(b), policies are simultaneously put into effect that cover at least 1,500 employees, with no single employer having more than 1/5 of the employees insured by the assessable mutual. A full year's premium shall be paid by each employer, aggregating at least \$200,000.

(d) (i) The number and amount of required initial applications and premium payments may be reduced by substituting surplus for the applications or premium payments.

(ii) The commissioner shall determine the reduction in required initial applications and premium payments that is appropriate for a given amount of surplus.

(iii) The insurer shall continue to be assessable until conversion under Subsection 31A-5-507(1) to a nonassessable mutual.

(6) (a) The capital or permanent surplus requirements of Subsection (2) apply to persons seeking certificates of authority under this chapter to write reinsurance.

(b) This Subsection (6) may not be construed as requiring reinsurers to obtain a certificate of authority.

(c) Section 31A-17-404 imposes alternate safety prerequisites to reserve credit being granted for reinsurance ceded to a reinsurer without a certificate of authority.

Amended by Chapter 123, 2005 General Session

31A-5-212. Certificate of authority.

(1) The corporation may apply for a certificate of authority at any time prior to the expiration of its organization permit. The application shall include a detailed statement by a principal officer about any material changes that have taken place or are likely to take place in the facts on which the issuance of the organization permit was based, and if any material changes are proposed in the business plan, the information about the changes that would be required if an organization permit were being applied for.

(2) (a) The commissioner shall issue a certificate of authority if the commissioner finds:

(i) enough cash or property authorized under Subsection 31A-5-207(1)(a) or (2)(a) has been received to satisfy the requirements of Section 31A-5-211;

(ii) there is no basis for revoking the organization permit under Subsection 31A-5-209(2); and

(iii) all other applicable requirements of the law have been met.

(b) The certificate of authority shall specify any limits placed on the insurance business the corporation may carry on and may, within the powers given the commissioner under this title, specify limits on the corporation's methods of operation.

(3) After the issuance of the certificate of authority the following action shall take place:

(a) The board shall authorize and direct the issuance of certificates for shares, bonds, or notes subscribed to under the organization permit, and of insurance policies upon qualifying applications obtained under the organization permit.

(b) The commissioner shall authorize the release to the corporation of all funds held in escrow under Section 31A-5-208.

(4) (a) A corporation may apply to the commissioner for a new or amended certificate of authority altering limits on its business or methods of operation. The application shall contain or be accompanied by information in Subsection 31A-5-204(2) as the commissioner reasonably requires. The commissioner shall issue the new certificate if the commissioner finds:

(i) the corporation's capital and surplus satisfy the requirements of Section 31A-5-211 as to the operations proposed under the new certificate of authority; and

(ii) the proposed business would not be contrary to law or to the interests of insureds or the public.

(b) If the commissioner issues an order under Chapter 27, Part 5, Administrative

Actions, against a corporation, the commissioner may also revoke the corporation's certificate and issue a new one with any limitation the commissioner considers necessary.

(5) Except as to Subsection (4), this section does not apply to stock or mutual insurance corporations already in existence on July 1, 1986.

Amended by Chapter 309, 2007 General Session

31A-5-213. Accelerated organization procedure.

(1) The incorporators may apply for a certificate of authority without first obtaining an organization permit if:

- (a) their number is not more than 15;
- (b) no compensation is paid directly or indirectly for soliciting any of them;
- (c) they purchase for their own accounts all the shares proposed to be issued in the case of a stock corporation, or in the case of a mutual, they supply all the minimum permanent surplus and initial expendable surplus by contribution notes or otherwise; and

- (d) the shares are promotional securities and are subject to Subsection 31A-5-304(3) and (4).

(2) The application for a certificate of authority shall include:

- (a) proof that the purchase price for the shares or the proceeds of contribution notes have been deposited on behalf of the proposed corporation;

- (b) a statement concerning whether and what property other than money is held in trust for the proposed corporation; and

- (c) the information which the commissioner reasonably requires under Subsection 31A-5-204(2).

(3) The commissioner shall issue a certificate of authority if he finds that:

- (a) all requirements of law have been met;

- (b) all natural persons who are incorporators, the directors and principal officers of corporate incorporators, and the proposed directors and officers of the corporation being formed are trustworthy and collectively have the competence and experience to engage in the particular insurance business proposed; and

- (c) the business plan is consistent with the interests of the corporation's potential insureds and of the public.

(4) The director of the Division of Corporations and Commercial Code shall issue a certificate of incorporation upon notice from the insurance commissioner that all the applicable requirements of law have been met, including the payment of fees.

(5) When the certificate of incorporation is issued, the corporation's legal existence begins, the articles and bylaws become effective, and the proposed directors and officers take office. The certificate is conclusive evidence of compliance with this section, except in a proceeding by the state against the corporation.

(6) This section does not apply to stock or mutual insurance corporations already in existence on July 1, 1986.

Amended by Chapter 95, 1987 General Session

31A-5-216. Change of domicile.

(1) A foreign insurance corporation may become a Utah insurance corporation if it submits an application which evidences that the corporation complies with all of the requirements imposed on domestic Utah corporations. The commissioner may, by order after a hearing, relax the requirements of this chapter applicable to corporations in the process of organization that, because of the developed status of the insurer, he finds unnecessary to protect policyholders and the public. The commissioner shall simultaneously issue a certificate of organization under Subsection 31A-5-204(3) and a certificate of authority under Subsection 31A-5-212(2) when the conditions for both have been satisfied.

(2) Upon approval by the commissioner, a domestic insurer may transfer its domicile to any other state in which it is admitted. The commissioner shall approve the transfer of domicile unless he finds that the transfer will prejudice the interests of policyholders, creditors, or the public in Utah. The commissioner may require a special deposit, reinsurance, or other protective measures as an alternative to rejecting the insurer's application to move. After or simultaneous with the removal of the corporation, it may seek entry into this state as a foreign corporation under Chapter 14.

(3) The transfer of domicile of an insurance corporation under either Subsection (1) or Subsection (2) does not affect the obligations of the corporation under its existing insurance contracts or any other existing contracts.

Enacted by Chapter 242, 1985 General Session

31A-5-217. Separate accounts for variable contracts.

(1) Separate accounts under this section may be designated by any appropriate name the corporation wishes to use, except that the commissioner may by rule provide guidelines for the naming of separate accounts.

(2) With the approval of the commissioner, any corporation may establish, or at the direction of the commissioner shall establish, one or more separate accounts and allocate to them any amounts paid or remitted to, or held by, the corporation under designated contracts or classes of contracts. These amounts are to be applied to provide benefits payable partly or wholly in variable dollar amounts, and to provide benefits in fixed and guaranteed dollar amounts and other incidental benefits.

(3) To the extent necessary to comply with the federal Investment Company Act of 1940, 15 U.S.C. Sec. 80a-1 et seq., or its interpretive rules, the corporation may:

(a) adopt special procedures for the conduct of the business and affairs of a separate account; and

(b) for persons having beneficial interests in a separate account, provide special voting and other rights, including special rights and procedures relating to investment policy, investment advisory services, selection of certified public accountants, and selection of a committee, the members of which need not be otherwise affiliated with the corporation, to manage the business and affairs of the account.

(4) The commissioner may specify in the certificate of authority of a newly organized corporation the minimum required capital or the minimum required permanent surplus to be provided for each separate account. If a separate account is established after a certificate of authority has been issued, the commissioner shall

require the corporation to allocate an adequate amount of capital and surplus to the separate account. An insurer may not be required to allocate more capital and surplus to a separate account than would be required of a separate insurer under Section 31A-5-211 and Chapter 17, Part 6, Risk-Based Capital.

(5) The income and assets attributable to a separate account shall always remain identified with the particular account, but unless the commissioner so orders, the assets need not be kept physically separate from other assets of the corporation. The income and gains and losses, whether or not realized, from assets attributable to a separate account shall be credited to or charged against the account without regard to other income, gains, or losses of the corporation.

(6) Except as provided in Subsection (7), liabilities arising out of any other business of the corporation are not to be allocated to a separate account, nor are any liabilities arising out of a separate account to be allocated to any other account of the corporation, except as provided in Subsection (11).

(7) (a) Each separate account shall be considered as an insurer within the meaning of Subsection 31A-27a-102(23).

(b) A liquidation order under Section 31A-27a-401 for the general account or for any separate account shall have effect as a rehabilitation order under Section 31A-27a-301 for all other accounts of the corporation. Claims remaining unpaid after completion of the liquidation under Chapter 27a, Insurer Receivership Act, shall be liens on the interests of shareholders, if any, but not on any other interests, in all of the corporation's assets that are not liquidated. The rehabilitator may transform these liens into ownership interests under Section 31A-27a-302.

(8) Assets in excess of the liabilities allocated to separate accounts are the property of the corporation.

(9) A corporation may own a particular asset in determinate proportions for separate accounts, for its general account, or as a trustee when acting as such within its legal powers.

(10) The corporation may by an identifiable act transfer assets among the separate accounts, the general account, and any trust accounts of the corporation, for fair consideration as defined in Section 31A-27a-102.

(11) The general account of the corporation, or any separate account, may, for a fair consideration as defined in Section 31A-27a-102, provide guarantees in connection with, perform services for, or reinsure other accounts, subject to rules adopted by the commissioner. The determination of a fair consideration shall be made by applying generally accepted accounting principles and realistic actuarial tables.

(12) Section 31A-18-102 deals with separate account investments. Section 31A-20-106 requires the commissioner's approval before delivery of certain variable contracts. Section 31A-22-411 and Subsection 31A-21-301(1)(d) deal with policy provisions in separate account contracts.

Amended by Chapter 309, 2007 General Session

31A-5-217.5. Variable contract law.

(1) This section applies to a separate account that is used to support one or more of the following:

(a) a variable life insurance policy that satisfies the requirements of Section 817, Internal Revenue Code;

(b) a variable annuity policy, including a modified guaranteed annuity; or

(c) benefits under a plan governed by the Employee Retirement Income Security Act of 1974.

(2) If there is a conflict between this section and another section of this title as it relates to a separate account described in Subsection (1), this section prevails.

(3) (a) Subject to the other provisions of this Subsection (3), a domestic life insurer may:

(i) establish one or more separate accounts; and

(ii) allocate to those separate accounts amounts, which include:

(A) proceeds applied under optional modes of settlement or under dividend options, to provide for life insurance or annuities; and

(B) benefits incidental to life insurance or annuities, payable in fixed, variable, or both fixed and variable amounts.

(b) An insurer shall credit to or charge against a separate account the income, gains, and losses, realized or unrealized, from assets allocated to the separate account, without regard to other income, gains, or losses of the insurer.

(c) Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in Subsection (3)(d):

(i) an insurer may invest or reinvest amounts allocated to a separate account and accumulations on those amounts without regard to the requirements or limitations prescribed by the laws of this state governing the investments of a life insurer; and

(ii) an insurer may not take into account the investments in a separate account in applying the investment limitations that otherwise apply to the investments of the insurer.

(d) Except with the approval of the commissioner and under any condition the commissioner prescribes as to investments and other matters, which shall recognize the guaranteed nature of the benefits provided, an insurer may not maintain in a separate account reserves for:

(i) benefits guaranteed as to dollar amount and duration; and

(ii) funds guaranteed as to principal amount or stated rate of interest.

(e) (i) Except as provided in Subsection (3)(e)(ii) and unless otherwise approved by the commissioner, assets allocated to a separate account shall be valued:

(A) at their market value on the date of valuation; or

(B) if there is no readily available market, then as provided under the terms of the contract, rules, or other written agreement that applies to the separate account.

(ii) Unless otherwise approved by the commissioner, the portion of the assets of a separate account that are equal to the insurer's reserve liability with regard to the guaranteed benefits and funds referred to in Subsection (3)(d) shall be valued in accordance with the rules that otherwise apply to the company's assets.

(f)(i) An insurer owns the amounts it allocates to a separate account in the exercise of the power granted by this section, and the insurer may not be, nor hold itself out to be, a trustee with respect to those amounts.

(ii) To the extent provided under the applicable insurance policy, an insurer may not charge the portion of the assets of a separate account that is equal to the reserves

and other insurance liabilities with respect to the separate account with liabilities arising out of any other business the insurer may conduct.

(g) (i) A sale, exchange, or other transfer of assets may not be made by an insurer between any of its separate accounts or between any other investment account and one or more of its separate accounts unless:

(A) in case of a transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the insurance policies with respect to the separate account to which the transfer is made; and

(B) the transfer, whether into or from a separate account, is made by:

(I) a transfer of cash; or

(II) if the transfer of securities is approved by the commissioner, a transfer of securities having a readily determinable market value.

(ii) The commissioner may approve a transfer not described in Subsection (2)(g)(i) among the accounts described in Subsection (2)(g)(i) if, in the commissioner's opinion, the transfer would not be inequitable.

(h) To the extent an insurer considers it necessary to comply with an applicable federal or state law, the insurer with respect to a separate account, including a separate account which is a management investment company or a unit investment trust, may provide for a person having an interest in the separate account to have appropriate voting and other rights and special procedures for the conduct of the business of the separate account, including:

(i) special rights and procedures relating to investment policy;

(ii) investment advisory services;

(iii) selection of independent public accountants; and

(iv) the selection of a committee, the members of which need not be otherwise affiliated with the insurer, to manage the business of the separate account.

Amended by Chapter 10, 2010 General Session

Amended by Chapter 324, 2010 General Session

31A-5-218. Subsidiaries.

(1) Subject to the limitations under Subsection 31A-18-106(1)(k), an insurance corporation may form or acquire subsidiaries to do any lawful insurance business.

(2) An insurance corporation may form or acquire subsidiaries to hold or manage any assets that it might hold or manage directly.

(3) (a) An insurance corporation may form or acquire subsidiaries to perform functions or provide services that are ancillary to its insurance operations.

(b) A subsidiary is an ancillary subsidiary if it is engaged principally in one or more of the following:

(i) acting as an insurance producer;

(ii) investing, reinvesting, or trading in securities, or acting as a securities broker, dealer, or marketing representative;

(iii) managing investment companies registered under the federal Investment Company Act of 1940, as amended, including related sales and services;

(iv) providing investment advice and services;

(v) acting as administrative agent for a government instrumentality performing

an insurance, public assistance, or related function;

(vi) providing services related to insurance operations, including accounting, actuarial, pension administration, appraisal, auditing, claims adjusting, collection, data processing, communications, loss prevention, premium financing, safety engineering, and underwriting services;

(vii) holding or managing property used by the corporation, alone or with its affiliates for the convenient transaction of its business;

(viii) engaging in the motor club business under Chapter 11, Motor Clubs;

(ix) engaging in the business of any institution subject to the jurisdiction of the Department of Financial Institutions under Title 7, Financial Institutions;

(x) providing similar services or performing similar activities which the commissioner declares ancillary by rule; and

(xi) owning corporations that would be authorized as subsidiaries under Subsections (3)(b)(i) through (3)(b)(ix) and under Subsections (1) and (2).

(4) An insurance corporation may form or acquire subsidiaries other than those under Subsections (1) through (3), but only to the extent the insurer has excess surplus as defined under Section 31A-1-301.

(5) (a) An insurance corporation shall notify the commissioner immediately following the formation or acquisition of a subsidiary under this section.

(b) Chapter 16 provides additional requirements that are applicable to the acquisition of certain subsidiaries.

Amended by Chapter 298, 2003 General Session

31A-5-219. Amendment of articles.

(1) Subject to Subsection (3) and to the requirements of the Insurance Code, a stock corporation may amend its articles under Sections 16-10a-1001 through 16-10a-1009 and a mutual may amend its articles under Sections 16-6a-1001 through 16-6a-1005 in any manner, including substantial changes of its original purposes. No amendment may be made contrary to Subsections 31A-5-203(1) through (3).

(2) An amendment becomes effective when the properly adopted and filed articles of amendment are approved by the commissioner.

(3) Section 16-10a-1009 applies to stock corporations and the second paragraph of Section 16-6a-1009 applies to mutuals.

Amended by Chapter 300, 2000 General Session

31A-5-301. Securities regulation.

(1) (a) Except as provided in Subsections (1)(b) and (c), no security issued by a domestic or nondomestic insurance corporation may be sold in this state by or for the corporation or any other person unless it is registered under Section 31A-5-302 and otherwise complies with this chapter. Securities that comply with this chapter are not subject to Title 61, Chapter 1.

(b) Securities and transactions exempt under Section 61-1-14 are also exempt under this chapter.

(c) Any exemption under Section 61-1-14 may be revoked by the commissioner

for a particular insurance corporation by an order after a hearing. The order shall explain the reasons for the revocation.

(2) (a) No person which is organizing or is acquiring additional funds in this state or elsewhere solely or partly for the purpose of organizing a corporation under this chapter, may register or sell its securities in this state, directly or indirectly, unless it obtains an organization permit under Section 31A-5-204.

(b) No security may be registered or sold in this state if the person registering or selling the security, or any person affiliated with the person, represents that an insurer will be organized or purchased in this state with the proceeds of the sale, unless the issuer first obtains an organization permit under Section 31A-5-204.

(3) If a security is issued or sold in violation of this chapter, the transaction is valid and enforceable by an outsider against the corporation or against an insider, and is valid and enforceable by the corporation against an insider.

(4) This section does not apply to securities issued prior to July 1, 1986.

Amended by Chapter 204, 1986 General Session

31A-5-302. Registration of securities.

(1) (a) An insurance security shall be registered with the commissioner:

(i) by coordination under Section 61-1-9; or

(ii) by qualification under Section 61-1-10.

(b) A registration statement under this Subsection (1) shall conform to Section 61-1-11.

(2) The commissioner has the powers specified in Sections 61-1-12, 61-1-15, 61-1-19, 61-1-20, and 61-1-24.

(3) Sections 61-1-16, 61-1-17, 61-1-18.3, and 61-1-25 apply to the regulation of securities under this part.

(4) As used in this chapter, the words "commission" or "division" under Title 61, Chapter 1, Utah Uniform Securities Act, mean the insurance commissioner.

Amended by Chapter 351, 2009 General Session

31A-5-303. Insider trading of securities.

(1) Every person who is directly or indirectly the beneficial owner of more than 10% of any class of any equity security of a domestic stock insurance corporation, or who is a director or officer of a domestic stock corporation, shall file with the commissioner within 10 days after he becomes a beneficial owner, director, or officer, and within 10 days after the close of any following calendar month in which there has been a change in his ownership or office, a statement in a form prescribed by the commissioner, of his office and of all the equity securities of the company which he beneficially owns, and of all the changes in either. The commissioner may accept a copy of a similar statement filed with another regulatory authority in satisfaction of this subsection's requirement.

(2) To prevent the unfair use of information which may have been obtained by a beneficial owner, director, or officer because of his relationship to the corporation, any profit realized by him from the purchase and sale or sale and purchase of any equity

security of the corporation within any period of less than six months, unless the security was acquired in good faith in connection with a debt previously contracted, is recoverable by the corporation. This recovery may be made in spite of any intention by the beneficial owner, director, or officer in entering into the transaction to hold the security purchased or not to repurchase the security sold for a period exceeding six months. A suit to recover the profit may be instituted in any court of competent jurisdiction by the corporation. If the corporation fails to bring suit within 60 days after request by the owner of a security of the corporation or if the corporation fails to prosecute it diligently, the owner of any security of the corporation may bring suit or prosecute the action in the name and on behalf of the corporation. This suit may not be brought more than two years after the date the profit was realized. This subsection does not apply to any transaction where the beneficial owner was not a beneficial owner both at the time of the purchase and sale, or the sale and purchase, of the security involved, nor does it apply to any transaction which the commissioner, by rule, exempts as not within the purpose of this subsection.

(3) (a) A dealer in the ordinary course of his business and incident to his establishment or maintenance of a primary or secondary market for the security other than on an exchange as defined in the federal Securities Exchange Act of 1934, is not governed by Subsection (2) regarding a purchase and sale or sale and purchase. The commissioner may by rule define terms and prescribe conditions regarding securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

(b) Subsections (1) and (2) do not apply to foreign or domestic arbitrage transactions unless made in contravention of rules the commissioner adopts to carry out this section.

(c) Subsections (1) and (2) do not apply to equity securities of a corporation if:

(i) the securities are registered, or are required to be registered, under Section 12 of the federal Securities Exchange Act of 1934, as amended; or

(ii) the corporation did not have any class of its equity securities held of record by 100 or more persons on the last business day of the year preceding the year in which equity securities of the corporation would otherwise be subject to Subsections (1) and (2).

(4) No person may, in contravention of rules the commissioner adopts for the protection of investors or the public, solicit or permit the use of his name to solicit a proxy, consent, or authorization regarding an equity security of a domestic stock corporation having 100 or more shareholders of record.

(5) No provision of this section imposing liability applies to an act done or omitted in good faith in conformity with any rule of the commissioner. Liability does not apply even if the rule is amended, rescinded, or determined by judicial or other authority to be invalid after the act or omission.

(6) As used in this section, "equity security" means any stock or similar security; any security convertible, with or without consideration, into stock or a similar security; carrying any warrant or right to subscribe to or purchase stock or a similar security; any such warrant or right; or any other security which the commissioner considers to be of similar nature and designates as an equity security by rules promulgated in the public

interest or for the protection of investors.

Enacted by Chapter 242, 1985 General Session

31A-5-304. Promoter stock.

(1) While the organization permit is effective, the incorporators, directors, and principal officers of a stock corporation shall in the aggregate subscribe and pay, at the public offering price, at least \$150,000 in cash or in property of equivalent value approved by the commissioner under Subsection 31A-5-207(1)(a) or (2)(a), for shares offered by the corporation under the organization permit.

(2) (a) Certificates representing promotional securities and any stock received on those shares as the result of a stock dividend, stock split, or exercise of preemptive or conversion rights, shall be placed in escrow with a depository satisfactory to the commissioner under an agreement providing that the shares may not be transferred without the approval of the commissioner.

(b) If the corporation issues any life insurance policies, any shares subject to this section shall be released from escrow five years after issuance of the certificate of authority. In other cases, the shares shall be released from escrow three years after issuance of the certificate of authority.

(3) The commissioner's approval of the transfer of promoter stock under Subsection (2)(a):

(a) shall be granted upon request, if the corporation has made an addition to earned surplus in each of the two immediately preceding years of at least 15% of the capital and surplus raised by the sale of shares under the organization permit; and

(b) may be granted upon a showing of hardship by the shareholder or his estate or legatee, if the release from escrow of the shares or a portion of the shares would not, in the commissioner's opinion, endanger the interests of insureds or the public.

(4) For three years after the issuance of the certificate of authority, an option to purchase stock may be issued only under a plan approved by the commissioner.

(5) This section does not apply to promotional securities issued prior to July 1, 1986.

Enacted by Chapter 242, 1985 General Session

31A-5-305. Authorized securities.

(1) (a) The articles of incorporation of a stock corporation may authorize the kind of shares permitted by Sections 16-10a-601 and 16-10a-602, and stock rights and options, except that:

(i) nonvoting common stock may not be issued;

(ii) all classes of common stock shall have equal voting rights;

(iii) all common stock shall have a stated par value; and

(iv) except with the commissioner's approval, for two years after the initial issuance of a certificate of authority, the corporation may issue no shares and no other securities convertible into shares except a single class of common stock.

(b) Section 16-10a-604 applies to the issuance of certificates for fractional shares or scrip.

(c) The consideration and payment for shares and certificates representing shares is governed by Subsection 31A-5-207(1)(a).

(d) The liability of subscribers and shareholders for unpaid subscriptions and the status of stock is governed by Section 16-10a-622.

(e) A shareholder's preemptive rights is governed by Section 16-10a-630.

(f) Stock corporations may issue bonds and contribution notes on the same basis as mutuals under Subsections (2)(a) and (b).

(2) (a) The articles of incorporation of a nonassessable mutual may authorize bonds of one or more classes. The articles of incorporation shall specify the amount of each class of bonds the corporation is authorized to issue, their designations, preferences, limitations, rates of interest, relative rights, and other terms, subject to all of the following provisions:

(i) During the first year after the initial issuance of a certificate of authority, the corporation may issue only a single class of bonds with identical rights.

(ii) After the first year, but within five years after the initial issuance of a certificate of authority, additional classes of bonds may be authorized after receiving the approval of the commissioner. The commissioner shall approve the issuance if the commissioner finds that policyholders and prior bondholders will not be prejudiced.

(iii) The rate of interest shall be fair.

(iv) The bonds shall bear a maturity date not later than 10 years from the date of issuance, when principal and accrued interest shall be due and payable, subject to Subsection (2)(d).

(b) A mutual may issue contribution notes with the commissioner's approval. The contribution notes may be denominated by any name that is not misleading. The contribution notes are subject to this subsection. The commissioner may approve the issuance only if the commissioner finds that:

(i) the notes will not be issued in denominations of less than \$2,500, and no single issue will be sold to more than 15 persons;

(ii) no discount, commission, or other fee will be paid or allowed;

(iii) the notes will not be the subject of a public offering;

(iv) the terms of the notes are not prejudicial to policyholders, holders of mutual bonds, or prior contribution notes; and

(v) the mutual's articles or bylaws do not forbid their issuance.

(c) A mutual may not:

(i) if it has any outstanding obligations on bonds or contribution notes, borrow on contribution notes from, or sell bonds to, any other insurer without the approval of the commissioner; or

(ii) make a loan to another insurer except a fully secured loan at usual market rates of interest.

(d) Payment of the principal or interest on bonds or contribution notes may be made in whole or in part only after approval by the commissioner. The commissioner's approval shall be given if all the financial requirements of the issuer to do the insurance business it is then doing will continue to be satisfied after that payment, and if the interests of its insureds and the public are not endangered by the payment. In the event of liquidation under Chapter 27a, Insurer Receivership Act, unpaid amounts of principal and interest on contribution notes are subordinate to the payment of principal

and interest on any bonds issued by the corporation.

(e) This section does not prevent a mutual from borrowing money on notes which are its general obligations, nor from pledging any part of its disposable assets.

(3) This section does not apply to securities issued prior to July 1, 1986.

Amended by Chapter 297, 2011 General Session

31A-5-306. Corporate repurchase of shares.

(1) (a) To the extent of excess surplus, a stock corporation may repurchase its own shares 15 days after giving written notice to the commissioner.

(b) A stock corporation without excess surplus shall obtain written approval of the commissioner prior to repurchasing its own shares.

(c) Any repurchase of stock is subject to Section 16-10a-631.

(d) A stock corporation may not repurchase its own shares if it is hazardous or would become hazardous as a result of the repurchase.

(2) Within 10 days after the end of any month in which it purchases more than 1% of any class of its outstanding shares, the corporation shall report the price and the names of the registered shareholders from whom the shares are acquired and of any other persons beneficially interested in those shares, so far as the latter are known to the corporation. The corporation shall make a similar report within 10 days after the end of any three-month period in which it purchases more than 2% of any class of its outstanding shares and within 10 days after the end of any 12-month period in which it purchases more than 5% of any class of its outstanding shares. Section 16-10a-631 applies to the corporation's acquisition of its outstanding shares.

(3) Treasury shares may be disposed of by the corporation for their current market value or, if there is no market, for the consideration the board of directors determines to be the fair value of the shares.

(4) Section 31A-17-407 applies to accounting for treasury shares.

Amended by Chapter 9, 1996 Special Session 2

31A-5-307. Reduction in capital.

A stock corporation may reduce its capital by amendment of its articles of incorporation under Section 31A-5-219, if the commissioner is notified of the proposed reduction at least 60 days prior to the proposed effective date of the reduction. The commissioner may disapprove the reduction within 45 days after the notice if he finds that it would violate the law or would be contrary to the interests of insureds. His order shall explain in detail why the distribution is disapproved.

Amended by Chapter 277, 1992 General Session

31A-5-401. Principal office and registered agent.

Each domestic insurance corporation shall have its principal office and place of business in this state. By order, the commissioner may exempt a corporation from this requirement, in which case it is subject to the requirement of Section 31A-14-204. The location of a domestic insurance corporation's principal office and the existence of a

registered agent are governed by Title 16, Chapter 17, Model Registered Agents Act.

Amended by Chapter 364, 2008 General Session

31A-5-401.1. Definitions.

As used in this Part 4:

(1) "Voting members of mutuals" and "voting members" mean persons entitled to vote at annual or special meetings of the members of a mutual, as set forth in the articles of incorporation or amendments to the articles.

(2) Voting members of mutuals and voting members do not necessarily include policyholders of the mutual, if the articles of incorporation or amendments to the articles of incorporation so provide, and if the articles of incorporation or amendments have been approved by the commissioner after a hearing.

Amended by Chapter 90, 2004 General Session

31A-5-402. Shareholders' meetings.

(1) Sections 16-10a-701, 16-10a-702, 16-10a-705, 16-10a-721, 16-10a-724, 16-10a-726, and 16-10a-728 apply to the meetings, notices, quorums, and voting of stock corporations. Except where a greater percentage is required or allowed under this title, the articles of incorporation of domestic insurers may not require more than 50% of the shares represented for the approval of an action requiring shareholder approval.

(2) Sections 16-10a-707 and 16-10a-720 apply to the closing of transfer books, the fixing of the record date, and the voting lists of stock corporations.

(3) Section 16-10a-731 applies to stock corporations. The transfer of shares to a voting trust does not preclude the trustor, or trustee, from being subject to Chapter 16.

Amended by Chapter 277, 1992 General Session

31A-5-403. Corruption in shareholders' meetings.

No person may, in connection with any meeting of shareholders, members, or policyholders of an insurer, buy or sell a vote or proxy for money or any other thing of value, or engage in any corrupt or dishonest practice in connection with the conduct of the shareholders' meeting.

Enacted by Chapter 242, 1985 General Session

31A-5-404. Communications to shareholders, policyholders, and voting members -- Commissioner's attendance at meetings.

(1) (a) Sections 16-10a-1601 through 16-10a-1604 apply to the books and records and their inspection by shareholders of stock corporations. Section 16-6a-1602 applies to the books and records and inspection rights of policyholders or voting members of mutuals. However, the inspection of the records of the names and addresses of policyholders or voting members of mutuals is permitted only to

communicate with other policyholders or voting members regarding the nomination and election of candidates for the board, or for other corporate matters which may be submitted to a vote of the policyholders or voting members. No person may, directly or indirectly, use any information obtained in an inspection for any other purpose.

(b) Any books, records, or minutes may be in written form or in any other form capable of being converted into written form within a reasonable time.

(c) Any provision of this chapter or of any articles or bylaws of a mutual, which requires keeping a record of the names and addresses of policyholders entitled to vote or voting members, is complied with by keeping a record of the names of policyholders or voting members and the names and addresses of insureds or persons paying premiums. This provision requires mailing or sending of notices, reports, proposals, ballots, or other materials to policyholders or voting members of record.

(2) Subject to Subsection (4), the commissioner may by rule prescribe that copies of specified classes of communications circulated generally by a corporation to shareholders, policyholders, or voting members be communicated to the commissioner at the same time.

(3) Subject to Subsection (4), the commissioner may attend any shareholders', policyholders', or voting members' meeting as an observer.

(4) Subsection (3) and, so far as it relates to communications to shareholders, Subsection (2) do not apply to stock corporations whose voting shares are owned by a single person, or whose shareholders are either members of the board or are explicitly represented on it.

Amended by Chapter 300, 2000 General Session

31A-5-405. Meetings of mutuals and mutual policyholders' and members' voting rights.

(1) (a) Subject to this section, Sections 16-6a-701, 16-6a-702, 16-6a-704, and 16-6a-714 apply to the meetings of members, the notice, and the voting in mutuals.

(b) Subject to this section and Section 31A-5-409, Section 16-6a-711 applies to the voting of members of mutuals.

(2) (a) Policyholders or voting members in all mutuals have the right to vote on:

(i) conversion;

(ii) voluntary dissolution;

(iii) amendment of the articles; and

(iv) the election of directors except public directors appointed in accordance with Subsections 31A-5-409(1) and (2).

(b) The mutual may adopt reasonable provisions in its bylaws to determine:

(i) which individual among joint policyholders may exercise a voting right; and

(ii) how to deal with cases where the same individual is one of several joint policyholders in various policies.

(c) The articles of any mutual may give the policyholders or voting members additional voting rights. These articles may require a greater percentage of affirmative votes to approve an action than the statutes require.

(3) (a) The articles or bylaws shall contain rules governing voting procedures and voting eligibility consistent with Subsection (1).

(b) An amendment to a rule described in this Subsection (3) is not effective until at least 30 days after the rule has been filed with the commissioner.

(4) (a) The articles or bylaws may provide for regular or special meetings of the policyholders or voting members, and, if meetings are not provided for, then mail elections shall be provided for in lieu of elections at meetings.

(b) Notice of the time and place of regular meetings or elections shall be given to each policyholder or voting member in a reasonable manner as the commissioner approves or requires. Changes may be made by written notice mailed, properly addressed, and stamped, to the last-known address of all policyholders or voting members.

(5) (a) The articles may provide that representatives or delegates selected by the policyholders or voting members shall be from specific geographical districts or defined classes of policyholders or voting members, as determined on a reasonable basis.

(b) After the representative assembly has been selected by the policyholder or voting members, the assembly or the respective classes of policyholders or voting members may choose replacements for members unable to complete their terms, if the articles provide for their replacement.

(c) The vote of a person holding a valid proxy is treated as the vote of the policyholders or voting members who gave the proxy.

Amended by Chapter 308, 2002 General Session

31A-5-407. Board of directors.

(1) Subject to this section, Sections 16-10a-801 through 16-10a-803, 16-10a-805, and 16-10a-811 apply to the board of directors of a stock corporation and Sections 16-6a-802 and 16-6a-805 apply to the governing board and trustees of mutuals.

(2) A majority of the directors shall be residents of this state unless the commissioner is satisfied that the corporation's financial condition, management, and other circumstances give assurance that the interests of insureds and the public will not be endangered by the majority being nonresidents.

(3) Employees and agents of a corporation that receive more than 10% of their income from the corporation, and persons related to any of them within the second degree by blood or marriage, if directors, are considered "inside directors." Inside directors may not constitute a majority of the corporation's board.

(4) Subsections (2) and (3) and the required number of directors for committees under Subsection 31A-5-412(1) do not apply to an insurance subsidiary authorized under Subsection 31A-5-218(1), nor to a stock insurance corporation, more than 50% of whose outstanding shares entitled to vote are owned or controlled by a single person or all of whose voting shareholders are either members of or are individually represented on the board.

(5) If the directors of a corporation are divided into classes by the articles or the bylaws, no class may contain fewer than one-third of the total number of directors. Subject to this requirement, Section 16-10a-804 applies to the classification of directors of stock corporations. When classes of trustees or directors are provided in a mutual

corporation, the terms of office of the several classes need not be uniform.

(6) The board shall manage the business and affairs of the corporation and may not delegate its power or responsibility, except as authorized by Section 31A-5-412.

(7) Section 16-10a-824 applies to the determination of a quorum of directors of a stock corporation and Section 16-6a-816 applies to the determination of a quorum of trustees for a mutual, except as specifically provided otherwise in this title.

(8) (a) Sections 16-10a-820 and 16-10a-821 apply to the meetings and action without a meeting of the board of directors of stock corporations.

(b) Sections 16-6a-812 through 16-6a-819 apply to the meetings and notice of mutuals.

(9) Sections 16-10a-1601 through 16-10a-1604 apply to stock corporations and Section 16-6a-1602 applies to mutuals regarding the examination of books and records of these entities.

Amended by Chapter 300, 2000 General Session

31A-5-408. Election and removal of directors and officers of stock corporations.

(1) Sections 16-10a-721, 16-10a-724, and 16-10a-728 apply to the voting of shares of a stock corporation.

(2) At each annual meeting of shareholders, the shareholders shall elect directors to hold office until the next succeeding annual election, except as provided under Subsection (3) or (4). Each director shall hold office for the term for which he is elected and until his successor is elected and qualified, if qualification is required.

(3) Sections 16-10a-808 and 16-10a-832 apply to removal of directors and officers of a stock corporation.

(4) Each director shall be subject to election at least once every three years.

(5) A vacancy in the board of directors may be filled by the affirmative vote of a majority of the remaining directors even though the number of remaining directors is less than a quorum. The director elected through this process shall serve only until the next regular shareholders meeting at which a director's election may be held.

Amended by Chapter 277, 1992 General Session

31A-5-409. Selection and removal of directors and officers of mutuals.

(1) The articles or bylaws of a mutual shall state:

(a) the number of directors of the mutual including the directors that are:

(i) appointed as public directors under this Subsection (1) and Subsection (2); or

(ii) elected under Subsection (3);

(b) the number of directors of the mutual that may be appointed as public directors; and

(c) the plan that specifies the manner in which:

(i) a public director is to be appointed; and

(ii) a director who is not a public director is to be elected.

(2) (a) The plan for the appointment of public directors specified in Subsection (1) shall assure true public representation on the board.

(b) A person appointed as a public director shall have insurance business or other business or professional experience that qualifies that person to serve responsibly and impartially as a director.

(c) A public director may be an uncompensated member of the board of directors.

(d) Notwithstanding Subsection (2)(c), a public director shall meet the qualifications of Subsection (2)(b).

(3) (a) A director who is not a public director shall be elected by:

(i) the policyholders; or

(ii) voting members.

(b) If the directors who are not public directors are divided into classes, one class shall be elected:

(i) at least every four years; and

(ii) for a term not exceeding six years.

(4) A director may be removed from office for cause by an affirmative vote of a majority of the full board at a meeting of the board called for that purpose.

(5) Subject to Subsections (1) through (4), Section 16-6a-810 applies to vacancies on the governing board.

Amended by Chapter 308, 2002 General Session

31A-5-410. Supervision of management changes.

(1) (a) Immediately after the selection of a person as a director or principal officer, the insurer shall report to the commissioner:

(i) the name of the person selected as a director or principal officer of a corporation; and

(ii) pertinent biographical and other data that the commissioner requires by rule.

(b) For five years after the initial issuance of a certificate of authority to a corporation, the commissioner may, within 30 days after receipt of a report under Subsection (1)(a), disapprove any person selected who fails to satisfy the commissioner that the person:

(i) is trustworthy; and

(ii) has the competence and experience necessary to discharge that person's responsibilities.

(2) (a) Whenever a director or principal officer of a corporation is removed under a provision listed in Subsection (2)(b), the insurer shall immediately report to the commissioner:

(i) the removal; and

(ii) a statement of the reasons for the removal.

(b) Subsection (2)(a) applies to a removal under:

(i) Subsection 16-6a-820(4);

(ii) Section 16-10a-808;

(iii) Section 16-10a-832; and

(iv) Subsection 31A-5-409(4).

(3) The commissioner may order the removal of a director or officer if the commissioner finds, after a hearing, that:

- (a) a director or officer:
 - (i) is incompetent;
 - (ii) untrustworthy;
 - (iii) is not qualified under Section 31A-5-409; or
 - (iv) has wilfully violated:
 - (A) this title;
 - (B) a rule adopted under Subsection 31A-2-201(3); or
 - (C) an order issued under Subsection 31A-2-201(4); and
- (b) the circumstances described in Subsection (3)(a) endangers the interests of:
 - (i) insureds; or
 - (ii) the public.

Amended by Chapter 308, 2002 General Session

31A-5-411. Continuity of management in emergencies.

(1) If an emergency is caused by an attack on the United States or by a nuclear or other disaster which makes it impracticable for a corporation to conduct its business in strict accord with applicable provisions of law, its articles, bylaws, or its charter, this section facilitates the continued operation of a domestic insurance corporation.

(2) The board of any corporation may adopt emergency bylaws, subject to repeal or change by action of those having power to adopt regular bylaws. These bylaws shall operate during a national emergency. Notwithstanding any different provisions in the regular bylaws, the applicable statutes, or the corporation's articles or charter, these emergency bylaws may make any provision that is reasonably necessary for operation during the emergency.

(3) If the board of a corporation has not adopted emergency bylaws, the following provisions are effective in a national emergency:

(a) Three directors constitute a quorum for the transaction of business at all meetings of the board.

(b) A vacancy on the board may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director.

(c) (i) If there are no surviving directors, but at least three officers of the corporation survive, the three officers with the longest term of service become the directors and possess all of the powers of the previous board and the powers that are granted under this section. The emergency board may elect other directors by a majority vote.

(ii) If there are not three surviving officers, the commissioner shall appoint three natural persons, including any surviving officers, as directors. They shall possess all of the powers of the previous board and any powers granted under this section. The emergency board may elect other directors by majority vote.

(4) The board of a corporation may, by resolution adopted by the board, provide that in the event of a national emergency and in the event of the death or incapacity of specified officers of the corporation, those officers shall be succeeded by the persons described in a succession list. The list may name persons or position titles. It shall establish the order of priority, successors in office, and it may prescribe the conditions for exercise of the powers of the office.

(5) The board of a corporation may, by resolution, provide that in a national emergency the home office or principal place of business is a location named in the resolution. The resolution may provide for alternate locations and establish an order of preference.

Enacted by Chapter 242, 1985 General Session

31A-5-412. Committees of directors.

(1) (a) If provided for in the articles or bylaws of a corporation, the board, by resolution adopted by a majority of the full board, may designate one or more committees.

(b) A committee designated under this Subsection (1) shall consist of three or more directors serving at the pleasure of the board.

(c) The board may designate one or more directors as alternate members of a committee to substitute for an absent member at any meeting of the committee.

(d) The designation of a committee and delegation of authority to the committee does not relieve the board or a director of responsibility imposed by law upon the board or director.

(2) (a) (i) Except for a corporation described under Subsection 31A-5-407(4), a corporation shall have an audit committee.

(ii) A corporation's entire board constitutes the audit committee if the corporation:

(A) is described under Subsection 31A-5-407(4); and

(B) does not have an audit committee that complies with this Subsection (2).

(b) If a corporation is required to have an audit committee under Subsection (2)(a), a member of the audit committee may not be an inside director as defined under Subsection 31A-5-407(3).

(c) An audit committee shall maintain an overview of the audit activities, systems, and staff of the company and of the activities of the outside auditors, in order to advise the board on the adequacy of fiscal control.

(d) A corporation shall give an audit committee direct and private access to company data and personnel as that committee considers necessary.

(e) An audit committee may meet privately with the outside directors as the audit committee sees fit.

(f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may make rules pertaining to audit committee requirements similar to those outlined in the Annual Financial Reporting Model Regulation of the National Association of Insurance Commissioners.

(3) (a) When the board is not in session, a committee may exercise the powers of the board in the management of the business and affairs of the corporation to the extent authorized in the resolution or in the articles or bylaws, except action regarding:

(i) compensation or indemnification of a person who is:

(A) a director;

(B) a principal officer; or

(C) one of the three most highly paid employees;

(ii) benefits or payments requiring shareholder or policyholder approval;

- (iii) approval of a contract requiring board approval under Section 31A-5-414;
 - (iv) approval of a transaction in which a director has a material interest adverse to the corporation;
 - (v) amendment of the articles or bylaws;
 - (vi) merger or consolidation under Section 31A-5-501, 31A-5-502, or 31A-5-503;
 - (vii) conversion under Section 31A-5-505, 31A-5-506, 31A-5-507, or 31A-5-509;
 - (viii) voluntary dissolution under Section 31A-5-504;
 - (ix) transfer of business or assets under Section 31A-5-508;
 - (x) any other decision requiring shareholder or policyholder approval;
 - (xi) amendment or repeal of an action taken by the full board, which by its terms is not subject to amendment or repeal by a committee;
 - (xii) dividends or other distributions to shareholders, policyholders, or voting members other than in the routine implementation of a policy determination of the full board;
 - (xiii) selection of a principal officer; and
 - (xiv) filling a vacancy on the board or on a committee created under Subsection (1), except that the articles or bylaws may provide for a temporary appointment to fill a vacancy on the board or a committee.
- (b) A temporary appointment provided for in Subsection (3)(a)(xiv) may last only until the end of the next board meeting.
- (4) The full board shall review a transaction in which an officer has a material financial interest adverse to the corporation at the next board meeting after the transaction.

Amended by Chapter 349, 2009 General Session

31A-5-413. Interlocking directorates and other relationships.

Any person who is simultaneously an officer or director of more than one insurer shall, upon the commissioner's request, disclose all conflicts of interest arising from holding those positions simultaneously. This disclosure shall be given to the directors of the insurers and to the commissioner within 15 working days after receipt of the commissioner's request.

Amended by Chapter 204, 1986 General Session

31A-5-414. Transactions in which directors and others are interested.

(1) Any material transaction between an insurance corporation and one or more of its directors or officers, or between an insurance corporation and any other person in which one or more of its directors or officers or any person controlling the corporation has a material interest, is voidable by the corporation unless all the following exist:

- (a) At the time the transaction is entered into it is fair to the interests of the corporation.
- (b) The transaction has, with full knowledge of its terms and of the interests involved, been approved in advance by the board or by the shareholders.
- (c) The transaction has been reported to the commissioner immediately after approval by the board or the shareholders.

(2) A director, whose interest or status makes the transaction subject to this section, may be counted in determining a quorum for a board meeting approving a transaction under Subsection (1)(b), but may not vote. Approval requires the affirmative vote of a majority of those present.

(3) The commissioner may by rule exempt certain types of transactions from the reporting requirement of Subsection (1)(c). The commissioner has standing to bring an action on behalf of an insurer to have a contract in violation of Subsection (1) declared void. Such an action shall be brought in the Third Judicial District Court for Salt Lake County.

Enacted by Chapter 242, 1985 General Session

31A-5-415. Officers', directors', and employees' liability and indemnification.

(1) Section 16-10a-841 applies to the liabilities of directors of a stock corporation. Subsection 16-6a-825(3) applies to loans to trustees and officers of a mutual. A director who votes for or assents to a violation of Subsection 16-6a-825(3) or Section 16-10a-842 is jointly and severally liable to the corporation for any loss on the distribution.

(2) Part 9, Indemnification, of Title 16, Chapter 10a, Utah Revised Business Corporation Act, applies to stock and mutual corporations, but no indemnification may be paid until 30 or more days after sending a notice to the commissioner of the full details of the proposed indemnification. The commissioner may bring an action in Third Judicial District Court for Salt Lake County to have such indemnification enjoined. The court may enjoin the indemnification to the extent it would render the insurer in a hazardous condition, or exacerbate an existing financially hazardous condition.

Amended by Chapter 300, 2000 General Session

31A-5-416. Compensation of director, officer, employee, person with investment authority, or others.

(1) Subject to this section, Subsections 16-10a-302(11) and (12) apply to:

- (a) a stock corporation; and
- (b) a mutual corporation.

(2) Shareholders' approval is required:

(a) of any benefit or payment to a director or officer for services rendered to a stock corporation more than 90 days before the agreement or decision to give the benefit or make the payment, unless the benefit or payment is made under a plan approved by the shareholders; and

(b) for a new pension plan, profit-sharing plan, stock option plan, or an amendment to an existing plan which, so far as it pertains to any director or officer, substantially increases the financial burden on the stock corporation.

(3) An action taken by the board of a mutual on the compensation of officers, directors, or employees, other than setting individual salaries or standards for salaries of classes of employees, shall be reported to the commissioner within 30 days.

(4) The annual statement of a stock or mutual corporation shall include the

amount of all direct and indirect remuneration for services, including retirement and other deferred compensation benefits and stock options paid each year:

(a) for the benefit of each of the following whose remuneration exceeds an amount established by the commissioner by rule:

- (i) a director;
- (ii) an officer; or
- (iii) an employee;
- (b) for all directors and officers as a group; and
- (c) (i) for the five most highly compensated officers;
- (ii) for the five most highly compensated directors; and
- (iii) for the five most highly compensated employees.

(5) An arrangement for compensation or other employment benefits for any director, officer, or employee with decision-making power may not be made if it would:

(a) measure the compensation or other benefits in whole or in part by any criteria that would create a financial inducement to act contrary to the best interests of the stock or mutual corporation; or

(b) have a tendency to make the stock or mutual corporation depend for continuance or soundness of operation upon the continuation of any director, officer, or employee in the person's position of director, officer, or employee.

(6) Except for the insurer, a person having any authority in the investment or disposition of the funds of a domestic insurer may not:

(a) accept any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment, or exchange made by or for the insurer; or

(b) be financially interested in the investment or disposition of funds in any capacity.

(7) Unless the commissioner, acting in the corporation's best interests, orders otherwise, if an order of rehabilitation or liquidation is issued under Section 31A-27a-301 or Section 31A-27a-401, the contractual obligations of the insurer for unperformed services of any director, principal officer, or person performing similar functions or having similar powers are terminated. This Subsection (7) does not apply to obligations vested before July 1, 1986.

Amended by Chapter 307, 2007 General Session

Amended by Chapter 309, 2007 General Session

31A-5-417. Exclusive management and exclusive agency contracts.

(1) No domestic insurer may enter into a contract that grants or surrenders the control and management of the insurer, unless the commissioner gives express approval of the contract. Such contracts, once approved, may not be amended without the commissioner's approval. Any contracts between a domestic reciprocal insurer, which insurers are governed under this chapter as any other mutual, and the insurer's attorney-in-fact are subject to this subsection.

(2) Unless the contract is filed and approved by the commissioner, no domestic insurer may enter into a contract granting, or allowing a person to have the exclusive or dominant right to produce the entire insurance business for the insurer. This type of

contract is considered approved, unless disapproved by the commissioner within 30 days after filing. If disapproved, the commissioner shall notify the insurer in writing of the grounds of the disapproval.

(3) The commissioner may not approve any contract under Subsection (1) or (2) that:

- (a) subjects the insurer to excessive charges for expenses or commissions;
- (b) vests any control in a person over the general affairs of the insurer to the exclusion of its board of directors or officers;
- (c) extends for an unreasonable length of time; or
- (d) contains other inequitable provisions or provisions that may jeopardize the security of policyholders.

Enacted by Chapter 242, 1985 General Session

31A-5-418. Dividends and other distributions.

(1) Subject to the requirements of Section 16-10a-842 and Subsection 31A-16-106(2), a stock corporation may make distributions under Section 16-10a-640 if all the following conditions are satisfied:

(a) A dividend may not be paid that would reduce the insurer's total adjusted capital below the insurer's company action level RBC as defined in Subsection 31A-17-601(8)(b).

(b) Except as to excess surplus, or unless the commissioner issues an order allowing otherwise, a dividend may not be paid that exceeds the insurer's net gain from operations or net income for the period ending December 31 of the preceding year.

(2) Title 67, Chapter 4a, Unclaimed Property Act, applies to unclaimed dividends and distributions in insurance corporations.

Amended by Chapter 116, 2001 General Session

31A-5-420. Payment of dividends by mutual insurers.

(1) When it is in the best interests of the company, the directors of a domestic mutual insurer shall declare, apportion, and pay to its members dividends from its net savings and earnings.

(2) The insurer shall make a reasonable classification of its participating policies and its assumed risks. No dividend shall be paid that is inequitable, unfairly discriminates between classifications of insurance contracts, or unfairly discriminates between policies within the same classification.

(3) Unless stated in the policy, no dividend, otherwise earned, shall be contingent upon the payment of the renewal premium on any policy.

(4) Subsection (1) may not be construed to require an insurer determined by the United States Internal Revenue Service to be a nonprofit organization to pay a dividend in a manner which would jeopardize that status.

Enacted by Chapter 242, 1985 General Session

31A-5-501. Merger of subsidiary corporation.

The merger of subsidiary insurance corporations is subject to the provisions of Chapter 16. In addition, the merger procedures outlined under Title 16, Chapter 10a, Utah Revised Business Corporation Act, apply to the mergers of subsidiary insurance corporations. For the purposes of this section, if the surviving corporation owns at least 80% of the outstanding shares of each class of the corporation to be merged into the surviving corporation, the procedures of Section 16-10a-1104, including no requirement of shareholder approval, may be used.

Amended by Chapter 277, 1992 General Session

31A-5-502. Merger and consolidation of stock insurance corporations.

Any two or more stock insurance corporations may merge or consolidate, under the procedures set forth under Title 16, Chapter 10a, Utah Revised Business Corporation Act. All mergers are subject to the provisions of Chapter 16.

Amended by Chapter 277, 1992 General Session

31A-5-503. Merger and consolidation of mutuals.

Any two or more mutuals may merge or consolidate, under the procedures set forth under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act. All mergers of mutuals are subject to Chapter 16.

Amended by Chapter 300, 2000 General Session

31A-5-504. Voluntary dissolution of domestic insurance corporations.

(1) (a) Except as otherwise modified by this section, a domestic stock insurance corporation may dissolve under Sections 16-10a-1401 through 16-10a-1409 and Section 16-10a-1440.

(b) Except as otherwise modified by this section, a domestic mutual insurance corporation may dissolve under Sections 16-6a-1401 through 16-6a-1409 and Section 16-6a-1419.

(2) (a) At least 60 days prior to the submission to shareholders or policyholders of any proposed voluntary dissolution of an insurance corporation, the plan of dissolution shall be filed with the commissioner.

(b) The commissioner may require the submission of any information in addition to the plan of dissolution that will establish:

- (i) the financial condition of the corporation; or
- (ii) other facts relevant to the proposed dissolution.

(c) If the shareholders or policyholders adopt the resolution to dissolve, the commissioner shall, within 30 days after the adoption of the resolution, begin an examination of the corporation.

(d) The commissioner shall approve the dissolution unless the commissioner finds, after a hearing, that the corporation:

- (i) is insolvent; or
 - (ii) may become insolvent in the process of dissolution.
- (e) Upon approval, the corporation may:

(i) transfer all of its obligations under insurance policies to other insurers approved by the commissioner; and

(ii) after the transfers described in Subsection (2)(e)(i), dissolve under Subsection (1).

(f) If the commissioner disapproves the dissolution, the commissioner shall petition the court for a liquidation under Section 31A-27a-207.

(3) During the dissolution under Subsection (1), the corporation may apply to the commissioner to have the dissolution continued under the commissioner's supervision. After receiving this application, the commissioner shall apply to the court for a liquidation under Section 31A-27a-207.

(4) If the corporation revokes the voluntary dissolution proceedings under Section 16-6a-1404 or 16-10a-1404, the corporation shall file a copy of the revocation of voluntary dissolution proceedings with the commissioner.

(5) In distributing the assets in the dissolution of a nonlife mutual, Section 31A-27a-705 applies.

(6) (a) No remedy available to or against the corporation, its directors, officers, or shareholders is taken away or impaired if an action or other proceeding is brought within two years after dissolution for any right or claim existing, or any liability incurred, prior to the voluntary dissolution under this section.

(b) The action or proceeding described in Subsection (6)(a) may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors, and officers may take appropriate corporate or other action to protect the remedy, right, or claim.

(c) A corporation which is dissolved by the expiration of its period of duration may amend its articles of incorporation during the two years to provide for perpetual existence.

(7) During the voluntary dissolution of a domestic insurance corporation under this section, its corporate existence continues to allow the winding up of the corporation's affairs regarding any property and assets not distributed or otherwise disposed of prior to dissolution. To effect that purpose, the corporation may:

- (a) sell or otherwise dispose of the property and assets;
- (b) sue and be sued;
- (c) contract; and
- (d) exercise all other necessary powers.

Amended by Chapter 309, 2007 General Session

31A-5-505. Conversion of a domestic stock corporation into a mutual.

A domestic stock corporation may be converted into a domestic mutual as follows:

(1) The board shall adopt a plan of conversion. After adopting the plan, no additional shares of capital stock may be issued, except that the board may continue to issue stock options under existing contracts, and holders of outstanding options may continue to exercise these options until the conversion is completed under Subsection (5).

(2) (a) The plan of conversion shall provide for the corporation's purchase of all

of its outstanding capital stock. The purchase price shall either be specified in the plan or be determined under a formula specified in the plan, for cash, specified debt securities to be issued by the mutual corporation, or both. All holders of capital stock of the same class have the same rights under the plan. Shareholders may be given an election to take all or a portion of the price in the specified debt securities. Debt securities may be of any class authorized for mutual corporations under Subsection 31A-5-305(2).

(b) The plan shall provide an equitable procedure for valuing contractual obligations of the stock corporation, including those relating to stock options, which options terminate on the date of conversion and are subject to being extinguished under Subsection (5)(b).

(3) No conversion may be effected unless the plan of conversion is approved by the commissioner under Chapter 16.

(4) After the commissioner approves the plan of conversion, it shall be submitted to the shareholders for approval by the affirmative vote of a majority of each class of shares entitled to vote. Only shareholders of record on the date of the board's action under Subsection (1) may vote.

(5) (a) If the shareholders approve the plan of conversion under Subsection (4), the commissioner shall issue a new certificate of authority and the board shall then implement the plan of conversion. The issuance of the certificate is the conversion of the corporation to a mutual. The corporation is no longer a stock corporation. The mutual is considered as having been organized at the time the converted stock corporation was organized.

(b) Any contractual obligation inconsistent with the nature of a mutual, including any obligation to issue or to redeem stock options, terminates upon the conversion under Subsection (5)(a), without compensation other than provided under Subsection (2)(b), unless the obligation was legally binding before July 1, 1986.

(6) The corporation may not pay any person, in connection with the proposed conversion, compensation other than regular salaries to existing personnel and compensation for clerical and mailing expenses. With the commissioner's approval, the corporation in connection with the proposed conversion may pay reasonable printing costs and legal and other professional fees for services actually rendered. All expenses of the conversion, including the expenses incurred by the commissioner and the prorated salaries and fringe benefits of any Insurance Department staff members involved, shall be paid by the corporation being converted.

Enacted by Chapter 242, 1985 General Session

31A-5-506. Conversion of a domestic mutual into a stock corporation.

(1) (a) Except as provided in Subsection (1)(b), a domestic mutual may be converted into a domestic stock corporation under Subsections (2) through (11).

(b) A domestic mutual that is affiliated with other mutuals may not be converted into a stock corporation, unless all the affiliated mutuals are converted at the same time, or the commissioner finds that the interests of the policyholders of the remaining mutuals can be permanently protected by limitations on the corporate powers of the new stock corporation or on its authority to do business, or otherwise.

(2) The board shall pass a resolution stating that the conversion is in the best interests of the policyholders. The resolution shall specify the reasons for and the purposes of the proposed conversion, and how the conversion is expected to benefit policyholders.

(3) (a) Chapter 16, Insurance Holding Companies, applies to the conversion of a domestic mutual into a stock corporation. In addition, the commissioner shall order the examination and appraisal of the corporation, unless the commissioner finds that:

- (i) the resolution is defective upon its face; or
- (ii) the basis or the purposes of the proposed conversion are contrary to law, to the interests of the policyholders, or to the public.

(b) The commissioner shall examine the company and all of its controlled affiliates under Section 31A-2-203 to determine their financial condition and whether they are operating in accordance with law.

(c) The commissioner shall appoint an appraisal committee, consisting of at least three qualified and disinterested persons with differing expertise, to determine the value of the corporation on the date of the resolution required by Subsection (2). Members of the appraisal committee shall receive reasonable compensation and shall be reimbursed for reasonable expenses in discharging their duties. They may employ consultants to advise them on technical problems of the appraisal, if necessary. The appraisal committee shall consider the assets and liabilities of the corporation, adjusting liabilities to take account of:

- (i) the amounts of any reserves in excess of or below realistic estimates;
- (ii) the value of the marketing organization;
- (iii) the value of goodwill;
- (iv) the going-concern value; and
- (v) any other factor having an influence on the value of the corporation.

(4) When the examination and appraisal reports have been made to the commissioner, the commissioner shall make copies available to the board. The board shall then prepare and adopt by resolution a plan of conversion. The plan shall be consistent with Subsections (4)(a) through (e) and shall state how the requirements of those subsections are satisfied.

(a) The plan of conversion shall state the number of shares proposed to be authorized for the new stock corporation, their par value, if any, and the price per share at which they will be offered to policyholders. The price per share may not exceed 1/2 of the median equitable share of all policyholders under Subsection (4)(b).

(b) (i) When an insurer has the type of policies with no investment value to the policyholders, each person who has been a policyholder and has paid premiums within five years prior to the resolution under Subsection (2) is entitled, without additional payment, to as much common stock of the new stock corporation as that person's equitable share of the value of the converting corporation will purchase. The equitable share is determined by the ratio which the net premium that person has paid to the corporation during the five years immediately preceding the resolution required by Subsection (2) bears to the total net premiums received by the corporation during the same period. The net premium is the gross premium less the return premium and dividends paid. If the equitable share would only purchase a fraction of a share of stock, the policyholder has the option of either receiving the value of the fractional

share in cash or purchasing a full share by paying the balance in cash.

(ii) When an insurer has the type of policies with specifically attributable investment value to the policyholders, each policyholder is entitled, without additional payment, to as much common stock of the new stock corporation as the policyholder's investment value in the converting corporation will purchase, determined by the proportion of the policyholder's investment value to the aggregate investment values of all policyholders. If the policyholder's share would only purchase a fraction of a share of stock, the policyholder has the option of either receiving the value of the fractional share in cash or purchasing a full share by paying the balance in cash.

(c) A written offer shall be sent to each policyholder indicating the policyholder's individual equitable share and the terms upon which the policyholder may subscribe for stock.

(d) Common shares may not be subscribed by or issued to persons other than policyholders, until all subscriptions by the policyholders have been filled. After those subscriptions have been filled, any new issue of stock for five years after the conversion shall first be offered to the persons who have become shareholders under Subsection (4)(b) in proportion to their interests under Subsection (4)(b).

(e) A policyholder in a nonlife mutual may not receive a distribution of shares valued under Subsection (4)(b)(i), which distribution is greater than the amount the policyholder is entitled to under Section 31A-27a-701. Any excess over the policyholder's entitlement under Section 31A-27a-701 shall be distributed in accordance with Section 31A-27a-705.

(5) The plan of conversion shall be submitted to the commissioner for approval, together with:

(a) the proposed articles and bylaws of the new stock corporation which comply with Section 31A-5-203;

(b) any information specified under Subsection 31A-5-204(2), which the commissioner reasonably requires; and

(c) a projection of the planned or anticipated financial situation of the new corporation for five years after the conversion.

(6) The commissioner shall then hold a hearing. The notice of the hearing shall be mailed to each person who was a policyholder of the corporation on the date of the resolution required by Subsection (2). This notice shall include a copy of the plan of conversion and any comments the commissioner considers necessary to adequately inform the policyholders.

(7) The commissioner shall approve the plan of conversion unless the commissioner finds that the plan violates the law or is contrary to the interests of policyholders or the public.

(8) After approval under Subsection (7), the conversion plan shall be submitted to a vote of:

(a) for mutuals subject to Subsection (4)(b)(i), those persons who were policyholders of the mutual on the date of the resolution required by Subsection (2); or

(b) for mutuals subject to Subsection (4)(b)(ii), those persons who had investment values in their policies as of the date of the resolution required by Subsection (2).

(9) If the policyholders approve the conversion under Subsection (8), the

commissioner shall issue a new certificate of authority. The issuance of the certificate is the conversion of the mutual to a stock corporation. This stock corporation is considered as being organized at the time the converted mutual was organized. Subject to the plan of conversion, the directors, officers, agents, and employees of the mutual shall continue in their same positions with the stock corporation.

(10) In the proposed conversion, the corporation may not pay any person compensation other than regular salaries to existing personnel and compensation for clerical and mailing expenses. With the commissioner's approval, the corporation may pay, at reasonable rates, for printing costs and for legal and other professional fees for services actually rendered. All expenses of the conversion, including the expenses incurred by the commissioner and the prorated salaries of any department staff members involved, shall be paid by the corporation being converted.

(11) The commissioner's approval of the plan of conversion satisfies the registration requirement of Section 31A-5-302.

Amended by Chapter 309, 2007 General Session

31A-5-507. Conversion of assessable to nonassessable and nonassessable to assessable mutuals.

(1) When an assessable mutual accumulates enough surplus to satisfy the financial requirements for the operation of a nonassessable mutual, it may apply for a certificate of authority authorizing it to sell nonassessable policies. The commissioner shall issue a certificate of authority designating it a nonassessable mutual, if he finds that the applicant satisfies the requirements of the law and that the issuance of nonassessable policies will not endanger the interests of its insureds or the public. Policies issued after the issuance of this certificate of authority are nonassessable. Existing policies remain in effect and are nonassessable.

(2) A nonassessable mutual may apply to the commissioner for a certificate of authority designating it an assessable mutual. The commissioner shall issue the certificate if the law permits the corporation to issue assessable policies and if he finds that the conversion will not endanger the interests of insureds or the public. All policies issued after conversion are assessable, unless otherwise provided by contract.

Enacted by Chapter 242, 1985 General Session

31A-5-508. Transfer of business or assets.

(1) In the sale, lease, exchange, or mortgage of assets with or without shareholder action, and concerning the rights of dissenting shareholders in those transactions, Sections 16-10a-1201, 16-10a-1202, 16-10a-1320 through 16-10a-1328, 16-10a-1330, and 16-10a-1331 apply to stock corporations. In the sale, lease, exchange, or mortgage of assets, Section 16-6a-1201 applies to mutuals.

(2) Chapter 16 applies to:

(a) the sale of a domestic insurer's assets or book of business, other than in the ordinary course of business; or

(b) the insurer entering into contracts of reinsurance which have substantially the same effect as a merger.

Amended by Chapter 300, 2000 General Session

31A-5-509. Conversion of a domestic mutual life insurance company into a fraternal.

A domestic mutual life insurance company may be converted into a fraternal under Chapter 9 in the following manner:

(1) The board of directors of the company shall adopt a plan of conversion stating:

- (a) the basis for and the purposes of the proposed action;
- (b) the proposed articles and bylaws for the new fraternal; and
- (c) the proposed procedure and estimated expenses for implementing the conversion.

(2) The plan shall be filed with the commissioner for approval, together with the information under Subsection 31A-9-205(2) required by the commissioner. The commissioner shall approve the plan unless he finds, after a hearing, that:

- (a) the conversion would be contrary to the law;
- (b) the new fraternal would not satisfy the requirements for a certificate of authority under Section 31A-5-212 as incorporated by Section 31A-9-210; or
- (c) the plan would be contrary to the interests of the policyholders or the public.

(3) After being approved by the commissioner, the plan shall be submitted to the policyholders for their approval.

(4) A copy of the plan adopted by the policyholders shall be filed with the commissioner, with a statement indicating the number and percentages of policyholders voting, the method of voting, and the number of votes cast in favor of the plan.

(5) If all requirements of the law are met, the commissioner shall issue a certificate of authority for the new fraternal. Upon this issuance, the mutual ceases its legal existence and the corporate existence of the new fraternal begins. The new fraternal is considered as having been incorporated on the date the converted mutual was incorporated. The new fraternal has all of the assets and is liable for all of the obligations of the converted mutual. The commissioner may grant a fraternal an adjustment period, not to exceed one year, for compliance with the requirements of Chapter 9. The commissioner's extension shall specify the extent to which particular provisions of Chapter 9 do not apply.

Amended by Chapter 204, 1986 General Session

31A-5-601. Duties of officers, directors, agents, and employees.

(1) Any officer, director, agent, attorney, or employee upon whom legal process is properly served or who receives notice of any legal action that may affect or involve the property or business of the insurer, shall promptly communicate the service or notice and detailed information about it to facilitate informed response to persons in the insurer's organization who have authority to take responsive action or to instigate responsive action by those in authority.

(2) A director of an insurer is assumed to have enough knowledge of its affairs to determine whether any act, proceeding, or omission of its directors is a violation of

any provision of this chapter. If a director is present at a meeting of directors at which a violation of any provision of this chapter occurs, he is considered as concurring in the violation unless at the meeting he requires his dissent to be entered on the minutes. If a director is absent from the meeting, he is considered as concurring in any violation if the facts of violation appear on the minutes of the meeting and he remains a director for six months after the violation without requiring that his dissent from the violation be entered upon the record or the minutes.

Enacted by Chapter 242, 1985 General Session

31A-5-602. Doing business in other states.

(1) Subject to Subsection (2), no domestic insurer may do an insurance business in any state in which it does not have a certificate of authority. It may not knowingly solicit in those states in any manner. Advertisements through printed media, radio, or television do not violate this subsection if they originate outside the state where there is no authority to do business, are not specifically directed to citizens of that state, and have a majority of their audience in states in which the insurer does have a certificate of authority.

(2) A domestic insurer may do a surplus lines business in a state in which it is not authorized, only if it complies with the surplus lines law of that state.

Enacted by Chapter 242, 1985 General Session

31A-5-701. General reporting requirement.

(1) An insurer domiciled in this state shall file a report with the commissioner disclosing any transaction listed in Subsection (2), unless the transaction has been submitted to the commissioner for review, approval, or information purposes pursuant to other provisions of this title or rules or other requirements made pursuant to this title.

(2) A report is required under Subsection (1) to disclose:

(a) material acquisitions and dispositions of assets; or
(b) material nonrenewals, cancellations, or revisions of ceded reinsurance agreements.

(3) The report required in Subsection (1) is due within 15 days after the end of the calendar month in which any of the transactions described in Subsection (2) occurs.

(4) (a) Except as provided in Subsection (4)(b), reports obtained by or disclosed to the commissioner pursuant to this part are confidential and are not subject to subpoena and may not be made public by the commissioner or any other person or organization, without the prior written consent of the insurer to which it pertains.

(b) (i) The commissioner may publish all or any part of a report in the manner the commissioner considers appropriate if the commissioner determines that the interest of policyholders, shareholders, or the public will be served by publication, after giving notice and an opportunity to be heard to the insurer who would be affected.

(ii) All or any part of a report may be disclosed without notice or consent to insurance departments of other states.

Enacted by Chapter 9, 1996 Special Session 2

31A-5-702. Acquisitions and dispositions of assets.

(1) (a) An acquisition or disposition of asset is not subject to the reporting requirements of Section 31A-5-701 if the acquisitions or dispositions are not material.

(b) For purposes of this part, an acquisition, a disposition, or the aggregate of any series of related acquisitions or related dispositions during any 30-day period, is material if it is:

- (i) nonrecurring;
- (ii) not in the ordinary course of business; and
- (iii) involves more than 5% of the reporting insurer's total admitted assets as reported in its most recent statutory statement.

(2) (a) An asset acquisition subject to this part includes every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for that purpose.

(b) An asset disposition subject to this part includes every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment, whether for the benefit of creditors or otherwise, abandonment, destruction, or other disposition.

(3) (a) The following information is required to be disclosed in any report filed pursuant to Section 31A-5-701 of a material acquisition or disposition of assets:

- (i) the date of the transaction;
- (ii) the manner of acquisition or disposition;
- (iii) a description of the assets involved;
- (iv) the nature and amount of the consideration given or received;
- (v) the purpose of, or reason for, the transaction;
- (vi) the manner by which the amount of consideration was determined;
- (vii) any gain or loss recognized or realized as a result of the transaction; and
- (viii) the name of any person from whom the assets were acquired or to whom they were disposed.

(b) (i) Insurers are required to report material acquisitions and dispositions on a nonconsolidated basis unless the insurer:

(A) is part of a consolidated group of insurers that uses a pooling arrangement or 100% reinsurance agreement that affects the solvency and integrity of the insurer's reserves; and

(B) ceded substantially all of its direct and assumed business to the pool.

(ii) For purposes of this section, an insurer is considered to have ceded substantially all of its direct and assumed business to a pool if:

(A) the insurer has less than \$1,000,000 total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement; and

(B) the net income of the business not subject to the pooling arrangement represents less than 5% of the insurer's capital and surplus.

Enacted by Chapter 9, 1996 Special Session 2

31A-5-703. Nonrenewals, cancellations, or revisions of ceded reinsurance agreements.

(1) (a) A nonrenewal, cancellation, or revision of ceded reinsurance agreements

is not subject to the reporting requirements of Section 31A-5-701 if:

- (i) the nonrenewal, cancellation, or revision is not material; or
- (ii) with respect to a property and casualty business, the insurer's total ceded written premium, on an annualized basis, is less than 10% of its total written premium for direct and assumed business; or

- (iii) with respect to a life, annuity, and accident and health business, the total reserve credit taken for business ceded, on an annualized basis, is less than 10% of the statutory reserve requirement prior to a cession.

(b) For purposes of this part, a material nonrenewal, cancellation, or revision is one that affects:

- (i) with respect to a property and casualty business:

- (A) more than 50% of the insurer's total ceded written premium; or

- (B) more than 50% of the insurer's total ceded indemnity and loss adjustment reserves;

- (ii) with respect to a life, annuity, and accident and health business, more than 50% of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement; or

- (iii) with respect to either property and casualty or life, annuity, or accident and health business:

- (A) an authorized reinsurer representing more than 10% of a total cession is replaced by one or more unauthorized reinsurers; or

- (B) previously established collateral requirements have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than 10% of a total cession.

(2) (a) The following information is required to be disclosed in any report filed pursuant to Section 31A-5-701 of a material nonrenewal, cancellation, or revision of a ceded reinsurance agreement:

- (i) the effective date of the nonrenewal, cancellation, or revision;

- (ii) the description of the transaction with an identification of the initiator of the transaction;

- (iii) the purpose of, or reason for the transaction; and

- (iv) if applicable, the identity of the replacement reinsurers.

(b) (i) Insurers are required to report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer:

- (A) is part of a consolidated group of insurers that uses a pooling arrangement or 100% reinsurance agreement that affects the solvency and integrity of the insurer's reserves; and

- (B) ceded substantially all of its direct and assumed business to the pool.

(ii) An insurer is considered to have ceded substantially all of its direct and assumed business to a pool if:

- (A) the insurer has less than \$1,000,000 total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement; and

- (B) the net income of the business not subject to the pooling arrangement represents less than 5% of the insurer's capital and surplus.

Amended by Chapter 116, 2001 General Session